A

REVIEW

OF SOME OF THE CIRCUMSTANCES

CONNECTED WITH THE SETTLEMENT

OF

ELIZABETH, NEW JERSEY,

BY

W. A. WHITEHEAD.

READ BEFORE THE N. J. HISTORICAL SOCIETY.
May 20th, 1869.

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REVIEW.

The student of our Provincial and Colonial history meets at every stage of his researches, with indications, more or less distinct, of the existence of an active and influential party, varying in power at different periods, but at all times arranged in opposition to the interest of the Proprietors who held under grants from the Crown of England, at first, both the government and the soil, and subsequently the soil only.

From the settlement of Elizabethtown in 1665, down to the war which separated the Colonies from Great Britain, this party is seen, sometimes controlling, always shaping or modifying public measures and exercising a potent influence over the social relations of the people, particularly in the eastern portion of the Province; and it is somewhat remarkable that such an ever present element in our early history, meriting especial notice, should not have received long ago, at the hands of some one of our associates, a thorough examination.

With no intention of attempting to supercede any such extended and critical review, I shall aim in this paper at a simple presentation of the circumstances leading to the formation of this party, with the view of arriving, if possible, at some sound conclusion as to its character, aims and effects.

I am prompted to do this by the fact, that a recent contributor to our local annals, in a work deserving high commendation for many of its features,* has stated in his preface that he was "constrained to differ * * "in respect to the merits of the conflict between the Proprietors and the "people," from the views expressed in the "History of East Jersey under the Proprietory Governments"—which the Society, more than twenty years ago, honored me by publishing as the first volume of their "Collections." Considering it due to the Society to correct any erroneous impressions that volume may have conveyed, I have carefully re-

* History of Elizabeth, New Jersey, including the Early History of Union County, by Rev. Edwin F. Hatfield, D.D.

viewed the grounds then taken, and would now present my reasons for continuing to hold unchanged, the position assumed therein. Let me therefore ask the attention of the Society to a brief exposition of the events out of which this "conflict" grew, as they are now susceptible of elucidation from records and traditions; premising, that during the last hundred years very little original matter has been added to the stores of the historian, whence to derive any new facts or illustrations; almost every important circumstance on both sides, having been narrated in that remarkable Bill in Chancery drawn in 1746 by James Alexander, of New Jersey, and Joseph Murray of New York; or in the answer thereto, emanating from William Livingston of New Jersey, and William Smith, Jr., of New York; to both of which all writers on our history are more or less indebted. Both the Bill and answer, however, call for considerable study, to relieve the truths they embody from the obscurity thrown around them by legal technicalities, or the peculiar presentation of facts which the skillful management of the suit rendered necessary or advisable.

The circumstances leading to the separation of New Jersey from New York are so well known as to call for no extended recital. James, Duke of York, having received from his brother Charles, on the 12th March, 1664, a grant for all the lands lying between the Connecticut River and Delaware Bay, despatched two armed vessels in April of that year to eject the Dutch then in possession at New Amsterdam. Colonel Richard Nicolls, in charge of the expedition, was authorized to assume the government of the Tract when conquered; and so confident was the Duke of a favorable result, that while Nicolls was yet at sea, on the 23d and 24th of June, by deeds of lease and release, he transferred to Lords Berkley and Carteret that portion of his extensive domain now known as New Jersey. It seems that Nicolls was not formally notified of this fact until November 28th,* and two or three weeks more probbly elapsed before the information reached him.† In the meanwhile, in consequence of an application made on the 25th of September, by John Bailey, Daniel Denton, Thomas Benneydick, Nathaniel Denton, John Foster and Luke Watson, of Jamaica, Long Island, he on the 30th of the same month granted to them, according to their request, "liberty to pur-"chase and settle a parcel of land to improve their labor upon, on the "river called Arthur Cull Bay." This purchase was made on the 28th October, a deed being obtained from the three Sagamores (one only, however, signing the instrument), conveying to Bailey, Denton and Wat-

* Grants and Concessions, p. 21.

† N. Y. Col. Docts. iii, p. 105.

son "their Associates, their Heirs, and Executors," the tract between the Raritan and the first river setting westward out of Arthur Cull Bay, "running westward into the country, twice the length that it is broad," the grantors stipulating "to keep them in the Enjoyment of the said "Lands from all Expulsion and Incumbrances whatsoever may arise, of "the said Lands, *by any Person or Persons, by any Reason of any Title had "or grown (given?) before the Date of these Presents;*" a guarantee, referring probably to a prior deed given by the same Indian thirteen years previously, to another party for the same tract, raising at the outset a question of title, which, whatever of interest it may have in itself, it is not necessary to discuss in this connection.*

On the 2d December Gov. Nicolls, granted to Bailey and Watson, (two of the purchasers of this Indian title) John Baker and John Ogden, his deed of confirmation or Patent. "To have and to hold the said "Lands and appurtenances to the s^{d} Capt. John Baker, John Ogden, John "Bailey and Luke Watson and their Associates, their heirs Exec^{rs}, ad- "min^{rs} and assigns forever. *Rendering and paying yearly unto his "Royal Highness The Duke of Yorke or his assigns, a certain Rent according "To the customary Rate of ye Country for New Plantations, and Doing and "p^{r} forming such acts and Things as shall be appointed by his said Royal "Highness or his Deputy,*"† &c.

The Lords Proprietors do not appear to have taken any active measures for the occupancy of their province for some months, waiting, probably, for certain intelligence of the success of the expedition under Nicolls, and other advices, but on the 10th February, 1665, they appointed Philip Carteret their Governor, and on the same day issued their so-called "Concessions and Agreements," regulating the manner in which the territory should be settled; the provisions more particularly affecting the matters under review being in substance as follows:

All the lands were to be taken up by *warrant* from the Governor, were to be *surveyed* by the Surveyor General, and *patented* by the Governor and Council.—No quit-rents were payable until the 25th March 1670, and thereafter annually, a "half penny of lawful money of Eng- "land for every of the said acres" was to be paid to the proprietors.

Early in August, 1665, Governor Carteret arrived in the waters of "Aurthur Cull Bay" and found on its borders the pioneers of the Jamaica emigrants, numbering, according to the most reliable statements, not more than four families, constituting the nucleus of the future Eliza-

* Elizabethtown Bill in Chancery, p. 5—Answer p. 8. Letter from a Gentleman of New Brunswick, p. 2, &c. E. J. Records B, 181.

† Elizabethtown Bill in Chancery, p. 26.

bethtown. And thus were the representatives of two parties, whose conflicting interests were to disturb for a century the harmony that might otherwise have prevailed, brought for the first time in contact, but not in collision; the differences were an after growth.* Let some consideration be now given to the character of their respective titles to the soil.

To understand aright the events of any historical period—to appreciate fully the relations existing between the Governors and the governed, and their respective rights and obligations, it is certainly advisable to realize as clearly as possible the peculiarities of the time as developed in the prevailing principles of law and government and the social condition of the people. The more perfect that realization, the more readily will the true position of affairs be perceived. These would seem to be axioms scarcely needing to be stated, but to a disregard of them may be mainly attributed the different opinions that have been entertained respecting the circumstances we are considering. To canvass the acts of individuals or nations in 1664, by the light which more than two hundred years of human progress has thrown upon intricate questions of moral and social science, is as judicious, as will be the attempt of the historian two hundred years hence to reconcile the state of things which we may safely conclude will then have resulted from progressive civilization, with that existing not long since throughout a large portion of our country, from the legal slavery that then prevailed. But such has been the course of writers upon this subject. The doings of the seventeenth century have been judged by the maxims of the nineteenth.

"It is a fundamental principle of English Law," says Kent,† "de-"rived from the maxims of the feudal tenures, that the King was the "original proprietor, or Lord paramount of all the land in the kingdom, "and the true and only source of title," and not only England, but all the European nations that established colonies in America, acting upon this principle, in conjunction with the dogma that discovery conferred the right to govern, assumed the position that every government within the limits of its discoveries reserved to itself the exclusive right to

* The harmony that prevailed at first, is attributed by Dr. Hatfield, (Hist. of Elizabeth, pp. 44, 50) to an entire relinquishment by Carteret of the claims of those he represented, but of which relinquishment there is no evidence other than the *exparte* statements in the "Answer" to the Bill in Chancery. In that document, of course, everything is denied that can possibly favor the case of the Proprietors, even to the origin of the name of the Town, which Dr. H. concedes to have been *probably* christened after Lady Elizabeth, the wife of Sir George Carteret, but which the descendants of the settlers very indignantly deny, (Answer, p. 20) claiming that the place was named in "memory of the renowned Queen Elizabeth."

† Commentaries, Vol. I, pp. 376, 377.

grant a title to the soil, subject only to the Indian's "right of occupancy;" and all persons were precluded from acquiring even that right from the natives, except by permission first obtained from its recognized agents or authorities.* Even at the present day and in our own land "the presumption is," says Judge Kent, "that the Indians are to be "considered merely as occupants" * * and * * "deemed inca-"pable of transferring the absolute title to any other than the Sovereign "of the country."

Such being the principles of law—such being the modes of procedure recognized as sound and universally prevalent in 1664, what was the course pursued under them by the emigrants from Long Island? Did they conform to them? They did. Not for a moment did they question the supreme authority of the grantee of the Crown over the land they desired to possess, but addressed their "humble petition" to his representative to be allowed to purchase the Indian title thereto; and having obtained it, instead of being satisfied therewith, sitting down each "under his vine and under his fig tree, with none to make him afraid," they acknowledged the yet defectiveness of their title, and the necessity for further and ampler powers than were conferred by the acquisition of the Indian's simple right of occupancy, by their application for a confirmation of their purchase and by their submission to the conditions upon which alone they might fully enjoy the privileges they sought. And what were those conditions? The Patent very clearly specifies them as consisting in "rendering and paying yearly unto his "Royal Highness the Duke of York, OR HIS ASSIGNS for ever, a certain "Rent, according to the customary rate of the country for new planta-"tions, and *doing and performing such acts and things as shall be appointed "by his said Royal Highness* OR HIS DEPUTY."

It was very soon contended on strictly legal grounds that, the acts of Nicolls affecting New Jersey, being subsequent to the transfer to Berkley and Carteret, were null and void, and the specific question some years later† being submitted to eight distinguished lawyers, (among them being Holt, afterward Chief Justice, Wm. Williams, afterward Solicitor General, John Hollis, and one of the Pollixfens) "whether the grants "made by Col. Nicolls, are good against the assigness of the Lord Berkley "and Sir George Carteret," they gave it as their opinion that "the author-"ity by which Col. Nicolls acted, determined by the Duke's grant to the "Lord Berkley and Sir George Carteret, and all grants made by him

* Kent I, p. 257, 379. Story, pp. 6, 7.

† A copy in the N. York, Hist. Soc. Library, Boundary Papers, Vol. 1, gives 1680 as the date.

"afterwards (tho' according to the Commission) are void; for the dele-"gated Power which Col. Nicolls had, of making Grants of the Lands, "could last no longer than his Master's Interest, who gave him that "Power; and the having or not having Notice of the Duke's Grant "to the Lord Berkley and Sir George Carteret, makes no difference in "the Law, but the want of Notice makes it great equity, that the pres-"ent Proprietors *should confirm such Grants to the people who will submit "to the Concessions and Payment of the present Proprietors common Quit "Rents;* otherwise they may look upon them as Dis-seisors, and treat "them as such."* Now this *equitable* right was always acknowledged. No attempt was ever made to *set aside* the Indian grant of occupancy. It was ever alluded to by Carteret as a "lawful purchase," but that by no means interfered with the right of the Proprietors to the stipulated customary rent referred to in the legal opinion just cited, or to the observance of such regulations as might be prescribed by those to whom the powers of the Duke of York were delegated.

It was certainly the intention of the Duke of York to place Berkley and Carteret in possession of the tract conveyed by him untrammeled by any restrictions or incumbrances whatever, "in as full and ample a manner" as he had received it from the King, and so, by confirmation after confirmatian was the fact sought to be established that they were, using the language of Charles himself, "absolute Proprietors" of the province.† But, notwithstanding that this appears to be so definitely affirmed, I conceive that it is not necessary to establish the invalidity of Nicolls' grants in order to prove the erroneous position taken (not at first, but subsequently) by those claiming through him. Allowing his authority to be unquestionable, what were the conditions of his Patent?

In the first place "the customary rate of the country" was to be paid yearly to the Duke "or his assigns." Is there any doubt as to who were "his assigns" in New Jersey? Is there any allegation that the "half penny per acre" prescribed as the rent by those "assigns" exceeded the customary rate? I have not met with any such.‡ And what were the "acts and things to be done and performed" according to the

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* Elizabethtown Bill, p. 41.

† Grants and Concessions, pp. 31 and 39, &c.

‡ The fact is, there was no one customary rate. Some of Nicolls' patents call for "a Lamb," or "a Barrel of Cod Fish." (Bill 15) and some were free, but we find "bushels of winter wheat" for tracts of 80 acres, which at 5s. a bushel was equal to three-fourths of a penny per acre. In Dongan's time the early patents were "called in," and new ones issued at higher rates, (N. Y. Col. Docts. iii., p. 401, 412) and in 1688 Andros was limited to 2s. 6d. per 100 acres, which was more than ½d. per acre. (N. Y. Col. Docts. iv., p. 302.)

appointment of the Duke "*or* his Deputy," but those prescribed in the Concessions? No rent was ever paid to the Duke personally, no requisition from him, as to "acts and things to be done and performed" was ever received or heeded, the parties therefore, to whom both obligations were due, were beyond question Berkley and Carteret, who were clothed with all the rights and authority the Duke himself possessed; and so the Duke asserted when, in reference to those who subsequently set up the claims of the Jamaica emigrants, he wrote to his Governor of New York: "I would have you "take notice yourself, and when occasion offers, make known to the said "persons and to all others, if any be pretending from them, that my "instruction is not at all to countenance their said pretentions nor any "other of that kind, tending to derogate in the least from my grant "above mentioned to the said John Lord Berkley, and Sir George Car- "teret, their heirs and assigns*"

The attempts made to prove that Elizabethtown was not settled under the provisions established by Berkley and Carteret, have necessarily led to the adoption of the theory that it is *probable* possession was taken of the tract, formally, between the date of the purchase from the Indians, and the date of Gov. Nicolls' confirmation, that is, between the 28th October and the 1st December, 1664, *because* the "four hundred fathoms of white wampum" which constituted part of the consideration to the Indians, and which was to be paid after "a years' expiration from the day of entry upon the said lands," was acknowledged to have been received in full on the 24th November, 1665; it *not* being *probable* that the time of payment was anticipated.† Now both these affirmative and negative probabilities seem to be rendered considerably less striking by the fact that a receipt, appended to the deed itself, shows that payment of one-fourth of the quantity of wampum was made as early as August 8th, 1665, and if the convenience or interests of the parties caused them thus to anticipate the payment of one-fourth, why should not the payment of the other three-fourths have been anticipated also? Is it not *more* probable that the arrival of Philip Carteret and his company, facilitated the payment, by placing at once at the disposal of the purchasers the means of meeting their engagements,‡ than that any attempt at settlement should have been made in November, when the proximity of winter must have prevented any improvements? The

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* Grants and Concessions, p. 32.

† Answer to Bill, pp. 7, 8. Hatfield's Elizabeth, p. 37.

‡ See affidavit of Edward Sackville referred to on a subsequent page.

actual settlement was probably commenced in the Spring of 1665, so that the assertion made in 1746,* that there were not more than four families on the ground ("if so many") when Carteret arrived early in August, must be regarded as the closest approximation to the truth now attainable. No evidence to the contrary has been yet discovered, while the assertion is based upon actual affidavits made seventy years previous, by three apparently disinterested individuals, personally cognizant of the matters of which they affirmed. As these affidavits have never been printed in full, it is well to introduce one of them here, as the importance of its revelations cannot be questioned.†

"Silvestre Salisbury of New Yorke Gent. maketh oath that in or "about the yeare 1665, he being then at New Yorke, there arrived Philip "Carteret Esq^{r} at New Jersey in America in a Ship called the Philip "w^{ch} s^{d} ship was 100 tuns & had then aboard her about 30 servants & "severall goods of great value, proper for the first planting and settling "of the Colony of New Jersey & this deponent sayeth that at the time of "y^{e} arrivall of the s^{d} ship there were about four families in New Jersey "(except some few at New Sinks that went under the nomen (?) of Qua-"kers) and that y^{e} s^{d} Philip Carteret after his arrivall there landed y^{e} s^{d} "servants and goods & applied himselfe to y^{e} planting and peopling of y^{s} "s^{d} Colony & that he sent diverse persons into New England & other "places to publish y^{e} Concessions of y^{e} L^{ds} Proprietr^{s} and to invite people "to come & settle there, whereupon & within a years time or thereabouts "severall p^{r}sons did come wth their families and settled there in severall "townes: And this Deponent sayth that he believes there would few or "none have come thither if the s^{d} Philip Carteret had not settled himself "as afores^{d} & brought such goods & sent such Messengers as afores^{d}. And "this Deponent sayeth that y^{e} s^{d} ship remained there about six months, & "then went to Virginia, England & other places & about a yeare or more "after returned to New Jersey where she remained for severall months;

* Elizabethtown Bill, pp. 28, 66.

† The originals of these interesting documents are in the first volume of the New York and New Jersey Boundary papers in the New York Historical Society Library, with which papers, however, they have no apparent connection. They were among the papers of James Alexander, and are in company with a letter from him to Edward Antill of New Jersey, making enquiries respecting the deponent. The affidavits are only briefly referred to in the Elizabethtown Bill, (page 28) owing probably to the difficulty encountered in legally establishing their authenticity, of which, however, there seems no ground for doubt. It is probable they originally had some reference to establishing the fact of the settlement, prior to the re-conquest of the country by the Dutch in 1673, with the view to its repossession on its restoration to the English, under the treaty between Charles II and the States General, Feb. 1674. See Bill in Chancery, p. 7.

"And this Deponent sayth that the s[d] Philip Carteret at his arrival did "declare & owne that the s[d] ship servants & goods, did belong to the "R[t] Hon[ble] S[r] George Carteret & were sent by him for the beginning and "encouragem't of the peopling and planting of the s[d] country; And "farther sayeth that the s[d] S[r] George Carteret did send severall other Ves- "sels thither particularly a Ketch whereof Peter Bennet was master anno "1673 laden w[th] wines and severall other English goods.

"SILVESTRE SALISBURY."

"Jurad 4° die ffeb. 1675 coram

"me en Cancellar Magester.

"JO. COTT."

Captain Silvestre Salisbury was an Englishman by birth, and possessor of lands on Hudson River. He was sent to England in 1675 by Governor Andros, to give information to his royal Master respecting various matters affecting the interest of his province of New York, especially the desirableness of Connecticut, and shortly after making this affidavit returned to America and is thought to have been subsequently in command of the fort at Albany.* Another affidavit similar in all respects to that of Salisbury's, was made at the same time by "Peter Smith, Gent, of New York," who is thought to have been a Roman Catholic Priest, and subsequently chaplain to Governor Dougan.† The third affidavit‡ is by "Edward Sackville of Westminster, Gent.," sworn to before Wm. Beversham, Feb. 24, 1675–6, and is similar to the two others, excepting that instead of the closing paragraphs in them referring to the ownership of the "Philip" and cargo, and to the despatch of other vessels to the province by Sir George Carteret, there appears this important item of testimony.

"And [the deponent] further sayeth that to his certain knowledge "the s[d] Philip Carteret did pay unto the Indians in goods to a consid- "erable value that they might enjoy their land quietly, otherwise they "could not have inhabited the same."

We have here then positive evidence of a fact, in accordance with what would otherwise have seemed the most probable explanation of the prompt payment of the stipulated consideration to the Indians. For it does not appear that the contemplated settlement had assumed such bright colors in the distance, as to render the acquisition of an interest therein to be sought with great avidity, there being positive evidence

* Letter of Edward Antill in Boundary Papers, Hist. Soc. Library.—N. Y. Col. Docts. ii. p. 739. iii. pp. 234—236, 238, 415.

† Letter of Edward Antill.

‡ It is endorsed on the back "A writing of great concernment."

that some were found who, after contributing towards the Indian purchase fund "disliking ye place vpon a view off it," had their advances refunded to them,* Some collatteral evidence is also offered of the few actually interested in the settlement, until after the arrival of Carteret, in the very document referred to as conveying to them their title. The applicants to Nicolls for permission to purchase, as already stated, were six in number, *John Bailey*, *Daniel Denton*, Thomas Benneydick, Nathaniel Denton, John Foster, and *Luke Watson*, but the deed from the Indians was only to Bailey, Daniel Denton, and Luke Watson, for although the words "and their associates" were added, it is very doubtful, from several circumstances, whether they had as yet any so indentified with them, as to render their co-operation certain. When, in little more than a month later, the purchase was confirmed by Gov. Nicolls, it was to Capt. John Baker—who probably for his services as Interpreter, was allowed to participate in its benefits without any contribution towards the purchase; John Ogden—then expecting to become intimately connected with the enterprise, and who shortly afterwards purchased the interest of the Dentons; John Bailey, and Luke Watson: and the presumption is, that at the time when the final payment was made to the Indians (Nov. 24. 1665), Carteret, by the purchase of Bailey's interest, that very day, and by contributions in behalf of the proprietors—Ogden by the purchase of the interest of the Dentons—and Luke Watson, were the only parties having anything at stake pecuniarily.† Hence the reasonable explanation, why, when the transfer of the Indian title to one moiety of the purchase (which will presently be noticed) was made to Daniel Pierce and his associates, the deed was signed only by Carteret, Ogden and Watson, as the only parties interested in that title.

That the denial of the Proprietor's rights to the soil was an afterthought, would seem to be susceptible of proof from several well established facts, only two or three of which can be specified in this paper.

Governor Carteret, immediately on his arrival, as we have seen, dispatched special agents to New England, and other places, to publish the terms of the "Concessions" and to invite emigration to New Jersey.‡

It is well known that the settlement of Newark was the consequence

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* Albany Documents, vol. 32 p. 118.

† Unless we except two individuals, Ambrose and Josiah Sutton, who subsequently complained that they never "had any consideration in land or any other way," for the sums they had advanced, they not having become residents, (Albany Documents, vol. 32, p. 118.)

‡ Is it "probable" that Long Island was not among the places to which these persons were sent, or that the settlers thence came not in accordance with this invitation?

of this publication and invitation, and it is entirely in accordance with probability, as well as with the asserted claims of the proprietors, that the lands located subsequently, if located legally, were so located under the "Concessions," and to sustain this position I would refer first to the circumstances leading to the settlement of Woodbridge and Piscataway.

It will be remembered that the deed from the Indians was to Bailey, Denton and Watson and their associates. But as we have seen, neither Bailey nor Denton felt sufficiently assured of the success of the undertaking in which they had embarked, and before 1666 the rights of Bailey had been assigned to Philip Carteret, and those of Denton to John Ogden. Baker, the other grantee named, not having become a resident, Carteret, Ogden and Watson were in 1666, as has been shown, the holders of the title under the original purchase. Now it is very significant of the views which then prevailed that, when in consequence of the invitation they had received, in common with the residents of "other places," Daniel Pierce, John Pike and Andrew Tappan, of Newbury, Massachusetts, presented themselves in New Jersey and fixed upon the southern portion of the Elizabethtown tract as a desirable location for one or more towns, Philip Carteret as "Governor of the Province "of New Jersey, in the behalf of the Lords Proprietors" should on the 21st May, 1666, have entered into an agreement with them, to which John Ogden was a witness, wherein are these two pregnant passages.

"They shall have the liberty within themselves to lay out every man's "proportion of land according to their judgment and discretion, not ex- "ceeding the proportion limited *in the Lords Proprietors' Concessions.*"

"For the *half-penny per acre per annum, due to the Lords Proprietors*, "the payment is to begin the 25th of March, 1670; and that every man "shall pay yearly in the Country-pay for no more Land than what is *ap-* "*propriated to him by patent;* provided, that every person shall patent so "much land in proportion, *as is specified in the Concessions*, or according "to their estates; and that all lands so patented, shall be *surveyed* and "bounded by the Surveyor General or his deputy," &c.*

Could any thing more emphatically set forth what were thought to be the rights and privileges of settlers *within the Elizabethtown tract*, after the publication of the "Concessions," than this document? If it had not been considered a correct exposition of those rights and privileges, how happens it that no exceptions were ever taken to its terms? If still recognized as paramount, why was Nicolls' Patent entirely ignored—not even alluded to?

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* Bill in Chancery, p. 29. For the document in full see E. J. Records, Liber i, 2d part, p. 19.

Having thus conformed to the established mode of procedure in acquiring their lands, and recognized the supreme authority of the Lords Proprietors, in order that there might be no question as to the extent of their domain and its freedom from all Indian rights of occupancy, a Deed was executed Dec. 11th of the same year: "Between Capt. Philip "Carteret, Esq., Govenor of the Province of New Jersey, John Ogden, "Esq., and Luke Watson, of Elizabethtown, in the s^d Province of the one "part, and Daniel Pierce of Newbury and his associates, of the other "part," conveying "the one moiety or half part of a certain tract of "land situate lying and being," &c., (following the Elizabethtown purchase deed) "which said tract of land was lawfully purchased from the "natives or Indians, by John Bayley, Daniel Denton and the said Luke "Watson," &c., * * —not a word said, be it observed, of its "confirm- "ation," by Nicolls—"to hold the one moiety or half of the said purchase, "&c., equal with the other moiety belonging to Elizabethtown aforesaid, "with all and singular rights, title, interest and conveyances (conveni- "ences?) belonging;"—the grantees stipulating that the "said Daniel "Pierce and his associates shall and may enjoy forever all and singular "the before demised premises, *in as full and ample a manner as the said "Capt. Carteret, John Ogden and Luke Watson do hold and enjoy the same.*"

The light that each of these documents throws upon the other is remarkable, and it would seem that nothing else could be required to establish the fact of the entire acquiescence of the first settlers in the enforcement of the Proprietors title. In the latter document we find that the moiety of the tract disposed of was to be held on precisely the same terms as the moiety retained; that the grantees were to hold and enjoy forever their portion "in as full and ample a manner" as the grantors hold theirs. If we wish to know what those terms were, and in what that fullness of possession consisted, we have only to refer to the former document and we have the information. If Pierce and his associates were to have their respective properties regulated by "the Lords Proprietors Concessions," the same Concessions were to regulate of course the properties of Ogden and his associates. If the lands in the southern half were to be appropriated to each settler by *Patent*, the provision must have applied as well to the lands in the northern half. If the one party was to pay the half penny per acre per annum, of course the same rent was to be paid by the other.*

* I cannot refrain from introducing a passage from Dr. Hatfield's recent History of Elizabeth, giving an account of the transfer to Pierce and his associates, to show how naturally theories may obscure the truth. Neither of the documents I have referred to are quoted, and the circumstances are disposed of as

But it is said that Governor Carteret, by purchasing the rights of Bayley and others, confessed that the grant or confirmation by Governor Nicolls of the Indian Deed to the Jamaica emigrants, conveyed a valid title; and thereby compromised the claims of the Proprietors. Let us give to this a brief consideration.

We have no definite information as to the frequency of communication between Carteret and his superiors in England, nor of the matters which were made the subjects of correspondence, but in the peculiar situation of the Govenor, surrounded by strangers, with few in whom to trust as advisers, and with Governor Nicolls near at hand fostering feelings of disappointment and chagrin at having lost control of what he deemed "all the improvable part" of the Duke's territory,* he must have often found himself at a loss how best to act, so as to guard the interest of the Lords Proprietors and at the same time retain his personal influence, and ensure his personal comfort. Decisions he had to make without doubt, unfortified by the views of his superiors, but there is nothing known, at variance with the reasonable supposition, that in reference to the rights acquired by the Indian purchase be acted, in accordance with their directions or known wishes, as in all he did he seems to have had ever in view the "great equity," that the distinguished counsel—already referred to—subsequently thought might properly lead to a confirmation of such rights to those who should submit to the "Concessions" and payment of the quit-rents. If not specially instructed, he

follows: "Some of the people of Newbury, Mass., finding themselves uncom- "fortably straitened for farming lands sent an expedition to visit these parts, and, "if pleased with what they saw and heard, to secure an eligible location for a "town. Hospitably entertained on their arrival, and made acquainted by personal "inspection, with that part of the Elizabeth Town patent that lay between the "Raritan and Rahway rivers that had been offered on fair terms *by the town* (?) "they concluded to purchase it. *According to the custom of the times* they applied "to Gov. Carteret and received, May 21st, 1666, the necessary permit to settle two "townships within the bounds specified; for which a deed, duly executed, was "given them December 11th, 1666, by Carteret, Ogden and Watson, *representing* "*the associates of the Town.* * * * If the Town Book, in which their early "transactions were duly recorded, were now accessible, *it would, doubtless, show* "*that the matter had been submitted to the people in town meeting* and a vote taken, "giving to Carteret, Ogden and Watson, authority to alienate "the one moiety or "half part" of their purchased possessions. It was sold as such "half-part of "the said tract of land which was purchased of the Indians." By becoming a "party to this transaction, therefore, Carteret again acknowledged the validity of "the original purchase and patent."

To all which it may be said that if "the people in town meeting," authorized this sale, of which, however, their is no proof, then "the people in town meeting" also, acknowledged that they were bound to have their lands surveyed and patented under the Concessions!

* N. Y. Col. Docts. iii, p. 105.

certainly evinced a true perception of that equitable right and a disposition to respect it.* *This* was the right he purchased; *this* was the right that in documents bearing his signature he admits to have been in the first instance "lawfully purchased of the Indians," that "right of occupancy," referred to by the legal authorities I have quoted, which, although acquired regularly, did not give a clear indisputable title according to the theory and practice of the day until surveyed and patented, subject to the "certain rent according to the customary rate of the country" as required both in the confirmatory grant of Nicolls and the subsequent Concessions of the Proprietors.† A striking illustration of the prevailing disposition to accord all possible rights to settlers, consistent with the superior title of the Proprietors, is seen in the confirmation to Augustine Herman, on the 16th Nov., 1666, of lands on the south side of the Raritan, opposite to Staten Island, *bought by him of the Indians March 25th*, 1651. "Provided that he makes good his pur-"chase from the Indians, and that he observe all such conditions and "things according to the Lords Proprietors and Concessions," and there are not wanting instances where claimants to lands acquired before the transfer to Berkley and Carteret, are called upon to substantiate their claims by actual settlement, and conformity to the Concessions, or else the lands would be awarded to others.

It must be remembered that the quit-rents were not payable until 1670, and that no steps were taken towards the issuing of patents prior thereto, the delay in requiring their obtainment, being doubtless owing, in part, to the uncertainty, during a portion of the time, as to where the ultimate proprietorship of the province would rest.‡ Consequently the several tracts taken up or allotted to settlers, with the improvements placed thereon by them, were subject to transfer at will to any purchaser, who, at the appointed time, should complete his title

* The Proprietors general instructions respecting the treatment of the natives merit a notice here. "If our Governor and Counsellors should happen to find "any Natives in our said Province and Tract of Land aforesaid, that then you "treat them with all Humanity and Kindness, and not in any wise grieve or op-"press them, but endeavor by a Christian carriage to manifest Piety, Justice and "Charity, and in your Conversation with them, the Manifestation whereof will "prove Beneficial to the Planters, and likewise Advantageous to the Propagation "of the Gospel." Grants and Concessions, p. 30.

† I am now satisfied that there are no grounds for the suggestion in "East Jersey under the Proprietory Governments," (Page 41, note) that the purchase of Bayley's interest by Carteret may have been made with the expectation that at any time his purchase might be confirmed. Further examination has convinced me that the true explanation of that transaction is what I have given above.

‡ See Proceedings of Society, vol. x, p. 102—*Note.*

in the prescribed mode. There was, therefore, in the simple acquisition of such individual rights by Gov. Carteret—in view of the acknowledged "equity" in them—that did not in the least conflict with the superior title of Berkley and Carteret. Bailey, for example, did not, in his deed, "warrant and defend" his lot or lots, "with all and every the "building or buildings thereon" to Carteret, against *all* claimants, but only in the language of the deed, against "any person or persons what-"soever that shall lay any claim or claims thereunto by form, or under "*him* (the said Bailey) or any of his heirs," &c.*

And, as we have seen, when Carteret, with Ogden and Watson, transferred the moiety of the entire tract to Pierce and his associates, they only guaranteed to them a possession equal to that they enjoyed in the other moiety, "in as full and ample manner as the s[d] Capt. Carteret, "John Ogden and Luke Watson, do hold and enjoy the same."

Another fact establishing the operative force of the Concessions, is this: By the Concessions it was stipulated that one-seventh part of each Township should be allotted to the Lords Proprietors, their "heirs and "assigns, the remaining to persons as they come to plant the same, in "such proportions as is allowed." Thus, in the agreement for the settlement of Piscataway and Woodbridge, it was especially provided that one thousand acres should be appropriated to the Proprietors, and subsequently in the Charter to Woodbridge, Amboy Point was reserved for their use "in lieu of the seventh part mentioned in the Concessions." It will be remembered that the holders of the southern moiety were to hold and enjoy forever their portion "in as full and ample manner," as Carteret, Ogden and Watson held and enjoyed the northern moiety. The question naturally arises, therefore, how were the Elizabethtown people, proper, situated as regards *this* proviso in the Concessions? Why we have on record a document emanating from the Govenor and Council, dated July, 20th, 1666, in which it is stated that "upon serious Consid-"eration, and for certain and importunate reasons best known unto them-"selves," they "have thought fit" to reserve a certain parcel of land and meadow for "the Lords Proprietors of this Province and their Heirs, "to be by them disposed of as they shall think fit, *as a part of that pro-"portion of land which of right they are to have out of every Township*," and all persons are forbidden from cutting any wood thereon, from building thereon, or from cultivating any part of it "without special leave or "licence first obtained from the Governor.*" Could any thing be more

* E. J. Records, Lib. i, p. 2.

* Bill in Chancery, p. 34. E. J. Records, Lib. iii, p. 10.

conclusive of the operation of the "Concessions," every where, within the original purchase, than this particular regulation prescribed by them, thus recognized as binding in both its northern and southern moieties? The "Concessions," if operative in part, were operative throughout. If the provision allotting certain lands to the proprietors was recognized as binding, requisitions respecting the payment of the quit-rents were equally so, and if the payment of the rent was acknowledged to be just, the obtainment of patents became equally obligatory. The document was ever regarded by Governor Carteret as a whole, and he ever required it to be so accepted.

It is a noteworthy circumstance that, notwithstanding the aversion felt to acknowledge their obligations under it, respecting their lands, the great mass of the people soon recognized the instrument as the Charter of their liberties, and in all other particulars appealed to it for protection of their rights. When, in 1684, the twenty-four Proprietors sent over to the Province what they termed their "Fundamental Constitutions"—the original document framed, now enriching the walls of the Library of the Society—which they thought the people would gladly adopt in preference to the "Consessions," of Berkley and Carteret, they found themselves mistaken, and the, at first, calumniated instrument, was retained as the foundation of the government. So in 1748—when, by act of the Legislature, the Laws enacted subsequent to the surrender of the Government to the Crown were authorized to be published under the supervision of Judge Nevill, the popular party were not satisfied until they had obtained and published that interesting collection of Papers known as Leaming and Spicer's "Grants and Concessions," comprising all those early documents both of East and West Jersey; and, it is due to the much contemned Proprietary Governments to state that, the Compilers had the frankness to say in their preface, "If our present "system of Government [that was in 1758] should not be judged so "equal to the natural rights of a reasonable creature as the one that "raised us to the dignity of a colony, let it serve as a caution to guard "the cause of Liberty"—implying that there was more Liberty under the Proprietors than under the Crown.

Returning from this digression let me call attention to a name that appears with Carteret's on the papers we have been considering—this grant of the Southern moiety of the Elizabethtown tract and this allotment, out of the same tract, to the Proprietors! it was that of JOHN OGDEN—one of those to whom the tract was confirmed by Nicolls—one of those who, it is said, was present when Carteret arrived—one of those who paid to the Indians the consideration for the tract—one perfectly conver-

sant with all the circumstances of the settlement, capable, honest, intelligent, fully able to appreciate the relations existing between the parties, who could scarcely have been invited to become one of the Governor's Council, and assuredly would not have accepted the position and acted in concert with the Governor, had he not been satisfied of the paramount title of the Proprietors. And although eventually found arrayed in opposition to the Governor, it was subsequent to the period under review, and when reasons of a personal character existed to account for the change.

That there were those among the settlers who soon exhibited opposition to the rights of the Proprietors may be considered unquestionable, but they were in a decided minority, and even the most strenuous upholder of the malcontents is obliged to acknowledge that "the affairs of "the town, so far as can be discovered, moved on very quietly and har- "moniously during the first two years after Carteret's arrival."* Much of the dissatisfaction subsequently manifested, and the demonstrations of a determined resistance to the terms of the "Concessions" which were developed, may be attributed to the very provision regarded as one of the most liberal—the postponement of the payment of quit-rents. But the nearer the 25th March, 1670, approached, the more active became the elements of discord. The enjoyment for three, four or five years of their respective allotments, free from all pecuniary liabilities to any one therefor, tended very naturally to beget a desire for a continuance of such a state of things, and hence, mainly, the disputes between the Governmental and country parties which, commencing with the difficulties growing out of contested rights to the soil, gradually extended to other matters, until the exercise of all authority by Carteret was set at naught.

It is not the purpose of this paper to discuss these differences. Doubtless there were errors committed on the part of the representatives of the Proprietors, mistakes made in the estimate placed upon some of their delegated powers, and in the manner in which those were administered, respecting which perchance there was no question, but these were made more grievous by the provocations on the part of the people; but a critical examination of the documentary and traditional history of the times, and an unprejudiced weighing of conflicting testimony, can lead only to one conclusion that, the refusal to respond to the well established legal requirements of the Proprietors was the *foundation* of the wide spread evils that have been referred to. For although its growth was repeatedly checked, by the chilling influences of authoritative exposi-

* Hatfield's Elizabeth, p. 121.

tions of the rights of the parties, the seed sown in the time of Berkley and Carteret, continued slowly to germinate throughout the period of their joint and several Proprietorships, and subsequently, after the surrender of the Government to the Crown by their successors, was fully developed in baneful luxuriance. Evil example is contagious, and in after years the decendants of the Newark Settlers, following in the steps of their neighbors of Elizabethtown, set up *their* Indian titles, also, as all sufficient, and even went so far as to assert that the "Concessions" had "never been known or heard of by the generality of the inhabitants" until then,* forgetful of recorded proofs of their recognition to be found in their own "Town Books."† Suits and counter-suits, ejectments legal and illegal, riots and commotions consequently mark the whole of the Colonial era, and not until, at last, the War of the Revolution came with all its varied effects upon property and population, did the contentions cease, and *possession* became the great panacea for controversies about titles. The famous suit in Chancery was never brought to a legal termination, but in its slow progress it gathered around it a large amount of most valuable information, giving, in the language of the title-page of the Bill—"a better Light into the History and Constitu-"tion of New Jersey" than can be derived from all other sources unconnected with it.‡

There have been some attempts to disparage Govenor Carteret by reference to the presumed effect of associations with a corrupt and aristocratic court, severing all sympathetic chords between him and the people around him; and broad intimations given that he and his company lived in "the unrestrained indulgence that so commonly and shamefully "characterized the Court of Charles," for all of which there is no warrant whatever. But even were the Governor chargeable with such dereliction in morals or deportment as estranged the people from him, how happened it that the same people could patronize the dissolute James Carteret, and sanction his subversion of the Government, who is described by a contemporary, and one who knew him personally, as "a very profligate "person" * * who "runs about among the farmers and stays where he can "find most to drink, and sleeps in barns on the straw."§ I will not scandalize the settlers of Elizabethtown by supposing that their selection of such a man for "President of the Country‖" as they did, indicated greater "sympathy" for *his* personal character than for that of his relative, the Governor. I am willing to attribute it rather to mistaken policy, a supposi-

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* Answer to the Proprietors Publications, p. 8. † See Note A.
‡ See Note B. § Danker's Journal, pp. 197, 198.
‖ East Jersey under the Proprietors, p. 55.

tion that his father, Sir George, would sanction their proceedings however subversive of his authority, if approved of and participated in by his dissolute son, an idea very effectually dissipated on the receipt of his response.*

The result of this examination, so far as it has been carried, may, I think, be considered as demonstrating that,—Although the acts of Gov. Nicolls, affecting the tract now known as New Jersey, of a date subsequent to that of its transfer to Berkley and Carteret, were legally void, yet there is no evidence now obtainable, of any desire on the part of the Proprietors to set them aside, *provided* their terms were adhered to by those to be benefitted by them, namely the payment of a certain quit-rent and the performance of such obligations as might be prescribed by those exercising authority under the Duke—

That inasmuch as the so-called "Concessions" were widely published by Gov. Carteret immediately on his arrival, and settlers invited to the Province under their provisions, we must presume, in the absence of all negative and the presence of much confirmatory testimony, that they were considered operative within the limits of the Elizabethtown purchase—

That in the absence of all proof to the contrary, we cannot do otherwise than accept as most probable the assertion made in print more than a hundred and twenty years ago, and in manuscript seventy years prior, that there were not more than four families on the ground, "if so many," on the arrival of Governor Carteret; and that there is no evidence that even the heads of those families did not conform to the requisitions of the "Concessions."—

That the settlements of Newark on the north and of Woodbridge and Piscataway on the south—the one, after "discourse and treaties with the Governor" with recorded evidences of a recognition of the obligations of the "Concessions," and the others, under express and stipulated provisions conformable thereto, said to be identical with the rights and privileges of the people of Elizabethtown,—are confirmatory of the intention on the part of the representatives of the Proprietors to have the "Concessions" generally operative, and of a prevailing understanding among the people to that effect.

And if these points are established, it must be conceded that—

The refusal to comply with the terms of the "Concessions" on the part of the Elizabethtown people, as regards the holding of their lands "by Warrant, Survey and Patent," from the Governor and his Council, was subversive of good order and prejudicial to the just rights of the

* Grants and Concessions, pp. 32, 41.

Proprietors, as interpreted by the laws and customs of the times; for however restricted may have been the limits of their purchase, within which they claimed exemption from the requirements of the Proprietors, their example and influence naturally prompted to similar action on the part of others beyond those limits.

NOTE A.—Page 20.

From the Newark Town Records, we find that in Town meeting Feb'y 3rd, 1669–70, the following language was adopted as part of a communication to the Governor from the settlers of Newark. "As for the payment of the Half-"Penny per Acre for all our allotted Lands, according to our Articles and Inter-"pretations of them, you assuring them to us, we are ready when the Time "comes, to perform our Duty to the Lords or their Assigns."

On the 24th March ensuing, a Committee was appointed to collect every man's quota in Summer Wheat at 5s. * * * "before the day be over, or else if they fail they are to Double the Quantity," which the committee on the morrow were to carry to Elizabethtown "and make a Tender thereof to the Governor "upon the account of the Lords Proprietors rent for the Land we made use of "according to Articles."

On the 20th March following, 1671, the same Committee were appointed to "Goe" to the "Governor in Behalf of the Town, make a Tender to Him in "Good Wheat for the payment of their Half-Penny per acre to Him for the "Lords Proprietors in like manner as they did the last year at the Day appoint-"ed; in case that he will accept of the same, that then they are fully Impow-"ered to give notice by the warners of the Town, for every one to bring in his "proportion of Corn," &c.

On 14th November, 1671, we find how "the Lords' rent" should be levied.

There is no intimation in the records of acceptance by the Governor of the proffered rent, but it is to be presumed, as it was unaccompanied by any application for a Patent, that it was refused; as the Governor had announced his determination not to receive anything as rent from any parties who had not taken out their patents.

Individual Settlers began in 1675 to comply with the terms of the "Concessions," the first patent being issued to Jasper Crane, August 25th, and subsequently, in December, 1696, a patent was obtained by the Town for the streets and public grounds. I have in my possession original memoranda of amounts paid to the proprietors' Receiver of Quit rents, when on his collecting tours, in which appear the names of most of the prominent inhabitants of Newark and the amounts they severally paid, and yet as late as 1746 the descendants of these men denied that their ancestors had any knowledge of the features of the Concessions involving the obligations of warrant survey and patent to perfect their titles.

Note B.—Page 20.

It is to be regretted that a Case of a nature calculated to determine the right of the Proprietors, which reached England on appeal in 1696 failed, through some technical defects in the proceedings, to receive a definitive decision on its merits. Much subsequent discussion would have been obviated, for it was left in such a position that it is doubtful if any important point at issue was either elucidated or established by it. Its history is briefly as follows:

The appellant was one Jeffrey Jones an early settler at Elizabethtown,—one of those who swore "to be true and faithful to the Lords Proprietors and their successors" in the first years of the settlement,—who, from having been connected with the disturbances of 1672 and other circumstances, had attained to considerable prominence in the place. On 25th April, 1676, he obtained a warrant for 180 acres of land, but took no further steps in conformity with the terms of the Concessions to perfect his title. In the mean while James Fullerton of Woodbridge settled upon the tract, or some other to which he laid claim. In 1693 Jones ousted Fullerton, and in September of that year Fullerton brought an action of trespass and ejectment against Jones, and the case came on for trial in the Court of Common Pleas at Amboy in May 1695; the Proprietors being the actual plaintiffs in the suit.

"The whole merits of the case" says Dr. Hatfield—but upon what authority he makes the statement does not appear—"were brought out before the Judges "and Jury on both sides. The events were then recent, the documentory evi- "dence was ample and well preserved * * so that the facts were fully before "the Court or within their reach." (History of Elizabeth page 241.) It is doubtful however that the circumstances connected with the settlement were brought out on the trial, for the Elizabethtown people in their answer to the Bill in Chancery, expressly state, (page 30) "that in this controversey (the "Jeffrey Jones case) there was not so much as a suggestion of the plaintiff that "the associates of Elizabethtown settled under the said Concessions" which seems to render it probable that the points at issue were more matters of law than of fact, a supposition which is strengthened by the slender details of the trial and its results that have come down to us. (Answer to Bill, page 30.) But allowing that such full exposition of circumstances was presented, it seems that the Council on both sides, upon the state of the facts as they understood them, agreed upon a special verdict, the terms of which are not known, and the court charged the Jury accordingly. Unfortunately, however, the Jury were not to be deprived of the opportunity offered to express their own views, and all being more or less interested in the result of the suit, instead of bringing in the special verdict agreed upon,—which whatever may have been its purport could not have been favorable to the defendant,—they brought in a general verdict against the Proprietors' title, as upheld by Fullerton. This the Court set aside and pronounced jndgment in accordance with the terms of the Special Verdict. (Bill in Chancery, p. 120 Answer p. 30.) The disaffected in the Province subsequently asserted that the Jury's course was promoted by a keen sense of justice worthy of all commendation, as they were "chosen by the Proprietors or their creatures" (Grants and Concessions, p. 693) but a document in the Library of the New York Historical Society signed by such men as Andrew Hamilton, John Barclay, John Reid and others of the Proprietors, the same year, states emphatically, that the Jury "all were parties, and contributed to "make up Mr. Nicolls fees"—Mr. Nicolls being Jones' advocate. (Boundary Papers, vol. 1, Instructions to Thomas Gordon.) The same document contains an incidental reference to the points raised by Nicolls, as does some manuscript

"notes" on another case to be found in the same depository, in which the positions taken by Nicolls are shown by references to various authorities, statutes and cases, to be untenable, but not a word is said about Jones' title depending upon the perfectness of the Indian purchase under the licence of Governor Richard Nicolls.

The supporters of Jones, appealed from the Judgment of the Court to the King in Council, and on the 25th February, 1696-7, on the reception of the report of a Committee of the Council, the Judgment was "reversed and repealed, and all "Issues thereupon declared null and void. (Answer to Bill, p. 30.) This reversal has been thought to "confirm unquestionably the validity of the titles" of the Elizabethtown people, but it must be observed that there is no declaration made of the grounds of reversal. James Alexander and Joseph Murray on reviewing the case (Bill in Chancery p. 120) say, that "the special verdict agreed "upon, and on which probably the judgment was given, was not found by any "Jury, on the contrary the Jury to whom it was referred gave a general Verdict "for Jones: on both which points undoubtedly the judgment was erroneous "and ought to be reversed, had the case been never so clear against Jones on "the special verdict agreed to."—Nicolls, however, who appeared for the appellant before the Council, stated on his return that "to the best of his remem-"brance the sole dispute was whether Col. Richard Nicolls as Governor under "the King of England in those parts might not grant Licence to any of the "subjects of England, to purchase Lands from the native Pagans? and if upon "such Licence and Purchase the English subjects should gain a property in the "Lands so bought? all which was resolved in the affimative and the Judgment "given to the contrary accordingly be reversed." (Answer to Bill, p. 31.)

One of the Committee of the Council before whom the case was argued was Chief Justice Holt, who seventeen years before, had joined with seven other distinguished lawyers in giving the opinion which has been already referred to (see Page 150) in which is this pregnant passage—"If any Planter be Refractory, "and will insist on his Indian Title or Purchase, and not submit to the Laws of "Plantations; the Proprietors who have the Title under the Prince, may deny "them the Benefit of the Law, and prohibit Commerce with them, as opposers "and Enemies of the public Peace." (Bill in Chancery, p. 41.) Is it probable that the decision in 1697 was inconsistent with the opinion of 1680? *If* the decision turned *solely* upon the question whether any property was required by the purchase "from the native Pagans," and asserted the acquisition of such "property," was it anything more than that *equitable right* which required confirmation in the mode prescribed by the Proprietors? They never controverted the fact that the first settlers did "gain a property in the lands so bought," but claimed a compliance by them with terms of the confirmation of the purchase which they themselves had sought from Governor Nicolls, that is, "the "rendering and *paying yearly* unto his Royal Highness, the Duke of York, OR "HIS ASSIGNS for ever, *a certain rent* and performing such acts and things as "shall be appointed," &c.

I consider it therefore very evident, that there could not have been anything in the reversal of the judgment in the Jones Case, at variance with the opinion the learned counsel had previously given. We are without any information as to the effect of the reversal in the province.